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Commission of Fine Arts on
14 April 1959

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Minutes of the Executive Session of the Commission of Fine Arts held in Washington, 14 April 1959, 5:00 p.m.

The Commission met, pursuant to notice at 5:00 p.m. with David E. Finley, Chairman, presiding.

Present, in addition to the Chairman, were:

Felix de Weldon	Mrs. Emily Muir
Douglas Orr	Michael Rapuano

L. R. Wilson, Secretary
Susan E. Bennett, Admn. Asst.

I. Administration

1. Date of next meeting - tentatively set for May 27, 1959.

2. Limit of Authorization of the Commission of Fine Arts

Drafts of a letter and amendment to the Enabling Act of the Commission to raise the limit of authorization to $125,000 was discussed. The Chairman, himself, believed that the Commission should not immediately ask for $125,000, but the consensus was that the limit should be raised high enough to preclude another request to raise it in the future. Some of the members raised the question of getting unlimited authorization, without stating a specific sum, and expressed the view that it seemed logical to have such authorization for the Commission because of the very modest expenditures that were being asked for now and have been asked for all through the history of the Commission. The Chairman said he thought this would be very desirable, but pointed out that we had done so in 1955 without result. He concluded, however, that it might be worthwhile to try again. The Commission members recommended that the Chairman proceed at once to write these letters and to submit them at the earliest date possible to the Bureau of the Budget so that they may be forwarded to Congress for appropriate action during this session. Exhibits A, A-1.

3. Opening Commission of Fine Arts meetings to the Press.

a. Letter dated April 7, 1959 from Mr. J. R. Wiggins, Executive Editor, Washington Post

Insofar as opening the entire meetings to the press and issuing the Order of Business, the members of the Commission were of the opinion that it would never be possible to open the entire meeting for this purpose and still have a frank discussion of the items on the agenda. The Secretary stated that the Order of Business was never completed until a very short time before the meeting was scheduled to convene and that it would be very difficult to give out to the press matters that were not completely fixed as to time or even as to certainty that they would be presented. The Chairman said he would write a letter to Mr. Wiggins

explaining the nature of the meetings, and tell him that the Commission would prefer to work with the press in the same way they have been doing, by opening the sessions only for certain items. Copy of the Chairman's letter to Mr. Wiggins to be made a part of the official record of the proceedings. Exhibits B, B-1.

4. Deficit in fourth quarter of Fiscal Year 1959 appropriations necessitated postponement of meetings for May 20 and June 17, 1959

The Secretary called attention to an approaching deficit in the appropriations for the fiscal year 1959. To cancel meetings and curtail activities for the remainder of this fiscal year ending June 30, 1959, was a matter of great regret to the members. The Chairman told the members about his and the Secretary's visit to the Bureau of the Budget to ask for a supplemental grant that would counter-balance the estimated deficiency of $1600, and described the unsatisfactory reaction which the reviewing officials of the Bureau of the Budget took to their request. There being no other resources, it was decided to meet soon after the beginning of fiscal year 1960.

5. Fiscal Year 1961 Budget

The Secretary reported that plans were being made to complete the estimates for the fiscal year 1961 budget appropriations at an early date, and that a figure of $42,800 was being submitted to the Office of Fiscal Affairs, Office of the Secretary of the Interior, where the formal estimates for the Commission are prepared. It was noted that $5000 above the last appropriation was being requested; and that both the Bureau of the Budget and the Office of Fiscal Affairs had recommended taking steps to have the limit of authorization raised by Congressional action. The members approved the submission of this budget estimate and authorized the Chairman, to take steps to have the limit of authorization raised.

II. Submissions

1. Government of the District of Columbia

a. Department of Highways

1. Theodore Roosevelt Bridge approaches (Mr. Immer's Proposal)

It was decided to write a letter to Mr. Immer thanking him for his effort and telling him his plan had been referred to the Commissioners of the District of Columbia, who replied in a letter expressing doubts about the feasibility of the traffic plan, in view of the lack of any connection to the Virginia roadway system. As a result of the negative reaction of the Highway Department, the Commission believed that it was not in a position to do more than indicate these facts to Admiral Phillips, Chairman of the Committee of 100. The Secretary was directed to inform Admiral Phillips of this action.

b. Department of Licenses and Inspection

1. Building applications submitted under the Shipstead-Luce Act

The actions recommended by the Shipstead-Luce Panel of Architects on the submissions listed on Appendix 1, were approved. Exhibit C.

Shipstead-Luce Act
SL 2126 ("Marty's" Sign Case)
Report on Hearing re jurisdiction over signs.

The Secretary made a verbal report on the Hearing held on March 26, 1959. Mr. Peaslee, Mr. Faulkner, members of the Shipstead-Luce Panel, and the Secretary, attended. A representative of American Institute of Architects and of the League of Women Voters were also present, as was Mr. Julian P. Green representing the Commissioners of the District of Columbia. Mr. Green and the other representatives made a strong case to have the Board support the standards of aesthetic judgment which the Commission had been applying to designs for private work along Pennsylvania Avenue and other locations in the Shipstead-Luce area.

In a report by the Board of Review and Appeals, importance was given to the opinion that signs were not a matter which properly fell under the Shipstead-Luce Act because they were not specifically mentioned in it. Because of this absence of specific authority over signs in the Act, and because of the threat which loss of control over signs would mean to the appearance of Pennsylvania Avenue, with resultant negating of the work that has been done by the Commission sinze 1930, great importance was put on making a strong case to minimize the attack on the Shipstead-Luce Act.

After hearing the testimony, the Board of Review and Appeals took no action, but instituted further study of all the factors in the case, reserving its opinion for future announcement.

The members of the Commission approved the action that had been taken and expressed their gratitude for the assistance of Messrs. Faulkner, Peaslee and Green for their interest in the case.

SL-2033 - Hickory House Restaurant
Applicant's appeal to Congress to set aside recommendations.

The Chairman read the letter which had been sent to the Assistant Counsel for the Senate Committee on the District of Columbia regarding the above case. The members approved of the action that had been taken. Exhibits D, D-1.

Shipstead-Luce - Preliminary
United Brotherhood of Carpenters & Joiners Headquarters Bldg.
Report on Secretary's visit to Architect of the Capitol
The Secretary reported that he had visited the Architect of the Capitol and shown him the drawings of the above mentioned building, in order to enable him to make any comment he desired about the design of the building, which faces the Capitol grounds. Mr. Stewart, the Architect of the Capitol, reserved his ppinion, but said he would like to have his assistant, Mr. Campioli, look at the drawings. Mr. Holabird was informed of these happenings and he in turn made arrangement for an interview with Mr. Stewart. The members of the Commission noted the action that had been taken and directed the Secretary to await the result of the meeting between Mr. Stewart and Mr. Holabird. The Commission had previously approved the design with the revisions that had been made, at its suggestion, by the architect.

2. Building applications submitted under the Old Georgetown Act
The actions recommended by the Secretary, on the submissions listed on Appendix 2, were approved. Exhibit E.

Report on Chairman's visit to Attorney General's Office of April 10, 1959, re Old Georgetown and Shipstead-Luce Acts
The Chairman reviewed for the members the status of threats to the administration of the Old Georgetown Act and the Shipstead-Luce Act. The Chairman stressed the inroads that the Corporation's Counsel's Opinion on the Old Georgetown Act had made, and the jeopardy that findings on the Marty's sign case, and others, would pose for the Shipstead-Luce Act. He stated further that he had visited an Aide to the Attorney General to determine procedures that might be taken to counteract the erosions that were being made by such strictly legal opinions on the intent and purpose of these two pieces of legislation. He had been advised at the Attorney General's Office to write a letter to the President enclosing the Opinion relating to the Old Georgetown Act and asking that it be forwarded to the Attorney General for review. Correspondence in this matter is to be made a part of the official recording of these proceedings. F, F-1.

III. Legislation

1. S. 1398/86th Congress, a bill "To provide that the Administrator of General Services shall preserve works of art owned by the United States, restore such works of art which have deteriorated or become damaged, provide high standards of architectural design and decoration and for other purposes".
The Chairman reported that, as requested at the Commission of Fine Arts on March 18, 1959, he had prepared a favorable report on the part of the above named bill regarding the restoration and preservation of works of art owned by or under the control of the United States Government. He also stated that an unfavorable report was made on that

part of the above bill providing for an increase in the membership of the Commission. The members approved of the action that had been taken.

2. Draft bill "To authorize the purchase of land for donation to the Pan American Health Organization as a headquarters site."
The Chairman reported that favorable action had been recommended on the acquisition of land as described in the above legislation. The members approved the report as written, copy of which is to be made a part of the official record of these proceedings. Exhibits G, G-1.

Meeting adjourned at 7:30 p.m.

L. R. Wilson
Secretary

MINUTES OF THE DIRECTION OF TIME MEETING
14 April 1959

OPENING OF BUSINESS

9:00 p.m.

1. [illegible] NOT

(a) Report on Decatur on SE Invalidities over edges in connection with "Rocky's" sign case.

(b) Hickory Wharf - Lake Tyer Tr. Donald P. Pelkman, Associates Counsel, Pesate Committee on the District of Columbia, ltd 3/10/59 and OPA's reply the 4/1/59.

(c) United Brotherhood of Carpenters & Joiners Mg. Bldg. - Report on Mr. Wilson's visit to Architect of Capitol.

2. LEGISLATION FOR ACTION:

(a) S.1776, 85th Congress. A bill "To provide that the Administrator of General Services shall preserve works of art owned by the United States; restore such works of art which have deteriorated or become damaged, provide high standards of architectural design and decoration and for other purposes." (report requested and drafted).

(b) Draft bill "To authorize the purchase of land for donation to the Pan American Health Organization as a headquarters site." (report requested and sent).

3. [illegible] OF [illegible] TAKEN OF [illegible] [illegible] APPLICATIONS SINCE 3/10/59 MEETING (See Appendix 1).

4. [illegible] OF ACTIONS TAKEN ON OLD CHAIRMAN'S ACT APPLICATIONS SINCE 3/10/59 MEETING (See Appendix 1).

5. [illegible] OF NEW MATTER

6. DISCUSSION:

(a) Theodore Roosevelt Bridge approaches (Lower proposal). See copy of letter from NCPC to Mrs. Ridgely, dated 3/20/59, and letter to OPA from E. O. Engineer Commissioner, dated 3/12/59 re Lower proposal.

(b) Letter dated 4/7/59 from Mr. L. R. Wiggins, Executive Editor, Washington Post re opening OPA meetings to press.

(c) Fiscal Year 1960 Budget - Deficit in 4th quarter appropriations received [illegible] pertinent of 3/20/59 and 4/13/59 meetings.

(d) Fiscal Year 1961 budget

(e) Need's legislation to raise OPA's limit of authorization.

(f) Report on Chairman's visit to Attorney General's Office on 4/10/59 re Old Georgetown and Richmond-Lynn Apts.

5 June 1959

Dear Mr. Speaker:

I enclose for consideration a draft of proposed legislation "To amend the Act relating to the Commission of Fine Arts."

The proposed legislation would eliminate a fixed limit of authorization of $35,000 for the expenditures of the Commission of Fine Arts, as established on May 25, 1955 (40 U. S. C., sec. 106). The Commission, which has been careful in its expenditure of Government funds over the 49 years of its existence, would prefer to have its enabling Act amended to authorize "such amounts as may be necessary to carry out the provisions of this Act."

Experience during the past three years, since 1955, has verified the Commission's fears that the limit of authorization was fixed too low, inasmuch as the actual operating expenses have already increased to a degree which makes it impossible to administer them within the $35,000 limit. Salaries of the staff and travel expenses of the members have increased; and the workload has required the members to hold extra meetings and longer sessions to cover the projects which come before them. The members receive no pay for their services, only actual expenses in attending meetings, but heavier travel expenses, authorized pay increases, in-grade salary raises, costs of recording the meetings, and costs of reproduction services required for study and recording of the submissions have necessitated the Commission's seeking sums in excess of the $35,000 limit for fiscal year 1960.

During the current fiscal year, it has been necessary to hold three extra meetings of the architect members of the Commission, the landscape architect member, and the Executive Secretary, in Philadelphia and New Haven in order to arrive at acceptable designs for the Theodore Roosevelt Memorial Bridge and the exterior of the addition to the Department of State, in consultation with the architects and engineers of these projects. The cost of these three meetings, plus the absorption of in-grade salary raises, has made it impossible for the Commission to hold the regular monthly meetings scheduled for May and June 1959.

The funds appropriated for the Commission in fiscal years 1957 and 1958 were entirely exhausted. No unnecessary expenditures have been made for the administration of the Secretary's office and the number of personnel has not risen in spite of the enlargement of the workload. It has not been possible

to provide technical assistance for the Secretary in processing the work. The Commission, therefore, has no other recourse, if it is to fulfill its responsibilities, but to request the Congress for a new amendment to its enabling Act that will establish an authorization within which it will be able to do its work without cancelling scheduled meetings and conferences, or asking the members to pay their own expenses in attending meetings.

Favorable action by the Congress on the Commission's request is strongly recommended.

The Bureau of the Budget has advised that it has no objection to the presentation of this proposed legislation. and that it concurs in the proposal.

For the Commission of Fine Arts:

Sincerely yours,

David E. Finley
Chairman

Honorable Sam Rayburn
Speaker of the House of Representatives
Washington, D. C.

A BILL

To amend the Act relating to the Commission of Fine Arts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act Establishing a Commission of Fine Arts," as amended (40 U. S. C., sec. 106), is amended to read as follows:

"Sec. 2. There are hereby authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act."

DRAFT

5 June 1959

Dear Mr. Stans:

I enclose herewith for your files the final revision in the letters which the Commission of Fine Arts is sending to the President of the Senate and the Speaker of the House with reference to amending the Act relating to the Commission of Fine Arts.

Sincerely yours,

L. R. Wilson
Secretary

Honorable Maurice Stans
Director
Bureau of the Budget
Washington, D. C.

Exhibit A-1

1 May 1959

Dear Mr. Wiggins:

At the meeting of the Commission of Fine Arts, which was held on April 15th, I read your letter of April 7th. The members asked me to say they would be glad to advise the press ahead of time of any items on the Commission's agenda which could be open to the press. In fact, we would like to have the press report such actions of the Commission as we ourselves are permitted to make public.

For instance, we asked the press to be present during the discussion with the District of Columbia Armory Board and others regarding the Stadium at our meeting on April 15th. The Commission later sent a letter to Mr. Shea, Chairman of the D. C. Armory Board, copy of which we sent to the press, containing our recommendations regarding the site and also the design of the building. We would like the position of the Commission to be clearly understood in this matter. We want very much to see a Stadium completed at the earliest possible moment, but believe its location should be such as not to interfere with the development of the East Capitol Street Mall as provided in the Plan adopted in 1950 by the National Capital Planning Commission and the Commission of Fine Arts.

The advice of the Commission is sought, and to the greatest advantage, in the early stages of planning, particularly by such agencies as the General Services Administration, the American Battle Monuments Commission, the D. C. Highway Department, the United States Mint, etc. These agencies do not wish any publicity given to their preliminary plans or designs until some decision has been reached both by the agency and the Commission. You will understand, I am sure, the reason for this and will agree, I hope, that it would not advance the public interest, insofar as the project is concerned, to make public preliminary discussions on such matters. Many other government agencies follow this same procedure but it is especially necessary for the Commission of Fine Arts to do so.

We shall be glad, however, to notify your City Desk as soon as we know of an item which has reached an advanced stage and is to be considered at the meeting of the Commission, provided no objection is raised by the agency involved. With many thanks for your interest in this matter, I am

Sincerely yours,

David E. Finley, Chairman

Mr. J. R. Wiggins
Executive Editor
The Washington Post and Times Herald
1515 L Street, N.W.
Washington 5, D. C.

Exhibit B

The Washington Post
AND
Times Herald

1515 L STREET, N W WASHINGTON 5, D C REPUBLIC 7-1234

JAMES RUSSELL WIGGINS
EXECUTIVE EDITOR

May 5, 1959

Dr. David E. Finley
Chairman
The Commission of Fine Arts
Interior Department Building
Washington, D. C.

Dear Mr. Chairman:

Thank you very much for your letter of May 1st.

I think it will be useful both to the Commission and to the press to have the agenda for your meetings.

Sincerely yours,

J. R. Wiggins

Exhibit B-1

APPENDIX 1

APR 15 1959

Shipstead-Luce Applications since 3/18/59

NO	ADDRESS AND OWNER	PROJECT	ACTIONS
2156	1505-07-09 22nd St., NW Olga G. Foley	Remove exist. basement steps & construct new. Remove masonry entr. steps. Open new entr. on st. level. Open wall for garage door. Replace present entr. door with French doors. Remove cupola. Remove bay window & construct flat front on 1507 only.	App'd. in general. (Note: No plans shown for 1507-22nd St., NW, where elevation indicates that bay is to be eliminated & replaced with new facade. Careful joining of new work to old is necessary. Recom'd. wider fixed sash in new 3-part window. Material & design of ornamental grille over entr. door not clearly specified.), 3/27/59
2157	22 3rd St., SE Jernell P. Kiefer	Brick addn. on rear of bldg. to be used as bathrm.	App'd. Recom. omission of horizontal muntins in window, leaving 3 lights in sashes. It is assumed that exist. 1-story structure will be razed, 3/27/59
2158	2500 Calvert St., NW Shoreham Hotel	Build gate house, & driveway from front parking lot to rear parking lot.	App'd., 4/9/59
2159	1707 G St., NW Kay's Sandwich Shop	1 s-f, 24 sq-ft, illuminated sign, plastic & metal, black, green & white	App'd. provided sign be attached flat against bldg., 4/9/59
2160	4630 Broad Branch Rd., NW Mr & Mrs Jos. S. Miller	Enclose exist. porch, add concrete stoop & step; 3' high retaining wall	App'd., 4/9/59
2161	5834 Oregon Ave., NW Bregman & Wolfson	1 2-story masonry & brick residence	App'd. as revised, 4/9/59
2162	5842 Oregon Ave., NW Bregman & Wolfson	1 2-story masonry & brick residence	App'd. as revised, 4/9/59

a/2/p

Exhibit C

APR 15 1959

ATTACHMENT 1

Shipstead-Luce Applications since 5/18/59

	ADDRESS AND DISTRICT	PROPOSAL	NOTICE
[illegible]	1304-07-09 32nd St., SW Dist. 7, Tolay	Remove entst. basement steps & construct new. Remove masonry entr. steps. Open new entr. on gd. level. Open wall for garage door. Replace present entr. door with French doors. Remove cripple. Remove bay window & construct flat front on 1307 only.	Appld. in general. (Note: No plans shown for 1307-32nd St., SW. where elevation indicates that bay is to be eliminated & replaced with new facade. Carefull joining of new work to old is necessary. Imposed. Under first item in new 2-part window. Detail & design of ornamental grille over entr. door not clearly specified.) 5/27/59
[illegible]	22 3rd St., SE Jerrell P. Slafer	Brick stair, on year of [illegible]. To be used as bumper.	Appld. Recom. ordinance of jurisdictional matters in majority. Hearing 2 July59 in agenda. It is proposed that [illegible] Zoning ordinance will be read. 5/27/59
[illegible]	2700 Calvert St., NW Dunbarton Hotel	Build pole barn, & driveway from front parking lot to rear parking lot.	Appld. 5/9/59
[illegible]	1707 G St., NW Lyle's Dentition Shop	1 n-f, 2½ sq-ft, illuminated sign, plastic & metal, blank, green & white	Appld. proposed sign to be attached flat against front wall. 5/7/59
[illegible]	4030 Broad Branch Rd., NW Dr & Mrs Don. S. Miller	Enclose exist. porch, add concrete stoop & steps 3' wide rear entry wall	Appld. 5/9/59
[illegible]	5913 Oregon Ave., NW Thurgood E Wolfson	1 2-story masonry & entst residence	Appld. as revised, 5/9/59
[illegible]	5902 Oregon Ave., NW Margaret E Wolfson	1 2-story masonry & entst residence	Appld. as revised, 5/9/59

ALAN BIBLE, NEV., CHAIRMAN
WAYNE MORSE, OREG.
J. ALLEN FREAR, JR., DEL.
VANCE HARTKE, IND.
J. GLENN BEALL, MD.
FRANCIS CASE, S. DAK.
WINSTON L. PROUTY, VT.

United States Senate

COMMITTEE ON
THE DISTRICT OF COLUMBIA

March 10, 1959

Mr. David E. Finley, Chairman,
Commission of Fine Arts,
7000 Interior Department Bldg.,
Washington, D. C.

Re: Hickory House Restaurant

Dear Mr. Finley:

I am enclosing for your Commission, copies of a bit of correspondence which I have had with the Government of the District of Columbia. I am at a loss to understand why the Commission of Fine Arts has approved the enclosed remodeling propositions and has refused the Hickory House.

I am quite certain this is not arbitrary in any shape or form. Therefore, I should like to have a report from your office concerning the disapproval of the application of the Hickory House to remodel. Please return the enclosures with your reply.

Thanking you for your kind consideration in this matter, I remain

Very truly yours,

Donald P. Feldman,
Asst. Counsel.

DPF:aw
Enc.

Exhibit D

HISTORY OF JOBS SUBMITTED TO THE COMMISSION OF FINE ARTS
IN THE VICINITY OF 821 MARKET SPACE, N. W.

Mr. Donald Feldman, of the Senate District Committee, has requested that the below listed permits be reviewed in connection with an unsatisfactory job performed at the premises of 821 Market Space, N. W.

A careful examination of the permit records and plans for work as listed below discloses that all applications were approved by the Commission of Fine Arts prior to issuance of the permits.

Lincoln Furniture Company
807 Market Space, N. W. A-28222 2/24/52
"Store front alterations, as per plan." This approval included a change in shape of existing show windows. Approved by Fine Arts Commission 1/29/52.

Vienna Bakery & Lunch Room
811 Market Space, N. W. A-32476 1/19/55
"Remodel front of building, as per plan." This approval included the removal of existing show windows and the replacement of same with new materials. Approved by Fine Arts Commission 1/17/55.

Booth Gift Shop
815 Market Space, N. W. #313251 11/9/43
"Make repairs, as per plan." Approval included replacement of existing show windows. Approved by Fine Arts Commission 7/1/43.

Hi-Boy Do-Nut Shop A-33111 3/24/56
901 Pennsylvania Ave., N. W. A-32226 2/26/54
"Make alterations, as per plan." This permit included replacing entrance doors in existing openings, and lowering existing show window bases. Approved by Fine Arts Commission 3/25/53.

Regal Shoe Store
915 Pennsylvania Ave., N. W. A-30595 12/12/57
"Install new store front, as per plan." This permit included the removal of existing display windows and the installation of new display windows (show windows). Approved by Fine Arts Commission 12/12/57.

Brenner Camera Store
933 Pennsylvania Ave., N. W. A-40820 10/20-58
"Remodel store front, as per plan." This permit included changing the shape of existing show windows. Approved by Fine Arts Commission 10/9/58.

In each case the remodeling involved the replacement or modification of existing show windows. These records contain no proposal by the Commission of Fine Arts, or by the applicants, suggesting the elimination of existing projecting show windows.

R. Donald Kinney

R. DONALD KINNEY
Deputy Director

DK:clk

1 April 1959

Dear Mr. Feldman:

Following the receipt of your letter of March 10,1959, enclosing a list compiled for you by the District of Columbia Government of previous building applications, approved under the Shipstead-Luce Act, for remodeling other buildings in the vicinity of the Hickory House Restaurant, we have reviewed the action of the Commission of Fine Arts in each of these cases, and have restudied the action taken on the Hickory House submission itself.

When an application to make a major remodeling in the Shipstead-Luce area is received, the Commission always advocates removal of projecting show windows and signs, in accordance with a policy that was adopted at the time the Shipstead-Luce Act was passed in 1930, and that has been adhered to since then. At that time it was determined not to approve projecting show windows and projecting signs, which the Commission considered as contributing two major causes for the chaotic appearance of the street scene. Accordingly, an applicant is always urged to remove a projection over the building line, even when all he desires is to repair or replace it without change in design. If the applicant is unwilling to do so, approval has been given to repair or replace existing projections, but not for new projections.

As a matter of record, I would like to point out that the Commission did not disapprove the original application (S-L 2033) to remodel the ground floor facades on 9th Street and Market Space, Northwest, for the Hickory House Restaurant. Inspection of the first plans submitted found them to be not satisfactory in design for either the 9th Street or Market Space facade. When the architects of the Commission's Shipstead-Luce Panel reviewed the application in accordance with Commission Policy, it was noted that the projecting show windows were to be removed from the 9th Street facade, leaving the facade flush on the building line; also that two relatively small projecting windows on Market Space were to be removed, but were to be replaced with one new projecting window. Regardless of the matter of the projection, the design for the Market Space facade was poor and could not be approved, and the architect for the Hickory House was consulted about changing the design. In several conferences, a satisfactory design without projections over the building line was achieved, and the application (S-L 2033) was returned on 29 January 1958, to the District Department of Licenses and Inspection approved with certain reservations

Exhibit D-1

regarding details. At each of its monthly meetings, the Commission of Fine Arts was kept informed by the Shipstead-Luce Panel and the Secretary of the progress of the application, and the Commission in turn confirmed the recommendation of the Shipstead-Luce Panel.

The work was not done in accordance with the plans that were approved under S-L 2033. The Commission does not inspect cases for compliance, and deviation from the approved design was not officially known until April 1958, when the Department of Licenses and Inspection forwarded a set of the first and corrected plans for consideration (S-L 2068). After reviewing S-L 2068, it was obvious that the applicant wanted Commission approval of an undesirable design after it had been completed. The position of the Commission of Fine Arts was made clear to the Department of Licenses and Inspection in a letter returning the application without action and calling attention to the discrepancy between the completed work and the approved plans.

Since that time, the members of the Shipstead-Luce Panel and the Secretary of the Commission have spent many hours in considering this problem, and in conferences with the owner and the District officials. We have tried to have the work completed in conformity with a long-standing policy of the Commission, and in the tradition of "good taste and good order" stipulated in the Shipstead-Luce Act. No objection was made to the District's granting a period of grace for the owner in order to avoid undue hardship to his business, but the Commission would not wish to approve the design as it now stands. This building is a prominent one in the appearance of Pennsylvania Avenue, and a short distance from the Capitol. Although a 19th century building, it has pleasing proportions. Removal of the projections from the 9th Street facade has made an undesired improvement, but the design of the Market Space facade still leaves much to be desired.

Another application (S-L 2132), mainly for a projecting sign over the undesirable projecting show window was disapproved on 17 December 1958. As noted above, projecting signs are against the long-standing policy of the Commission and to approve one in this case would imply acceptance of the projecting show window which had been disliked previously. An appropriate sign on the main wall of the building was recommended instead.

The attached list of alterations provided by the Department of Licenses and Inspection shows that the Commission of Fine Arts has been cautious, in approving only replacements of existing projecting show windows if the owner would not voluntarily eliminate them, or if he agreed to occupy less space beyond the building line, or if there was some other compensatory gain in the architectural appearance of the building. In the case of the Hickory House Restaurant, the most careful consideration has not revealed any reason for reversing our opinion, especially in view of the disregard of the plans to rescind as agreed to by the owner's representative and approved by the Commission in the original application S-L 2033.

I hope this explanation will give you the information you need about the advisory position of the Commission of Fine Arts in this case. I cannot close, however, without stating that the Congress, in passing the Shipstead-Luce Act, desired the District Government, with the advice of the Commission of Fine Arts, to exercise a reasonable control over the appearance of buildings in the area adjacent to the seat of the Federal Government, as specified in the Act. I think you will agree that it is impossible for the District Government to administer this Act and still allow every applicant to do exactly as he wants. In the case of Hickory House, the changes which the Commission advised were comparatively small and easily complied with. Yet this applicant proceeded to complete the work at variance with the permit he was issued, and now wishes his unauthorized work to be approved. I am sure that the advice the Commission gave to the District Government cannot be interpreted as denying to this applicant privileges that have been granted others. Enforcement of violations of building permits is a matter for the District of Columbia Government and the Commission of Fine Arts should not interfere with this function.

For the Commission of Fine Arts:

Sincerely yours,

David E. Finley
Chairman

Mr. Donald P. Feldman
Assistant Counsel
Committee on the District of Columbia
United States Senate
Washington, D. C.

cc- Chief, Permit Branch
Department of Licenses and Inspection
District of Columbia Government

APPENDIX 2

APR 15 1959

Old Georgetown Applications since 3/18/59

NO	ADDRESS AND OWNER	PROJECT	ACTIONS
2345	3600 M St., D. C. Transit System, Inc.	Install cooling tower structural steel support, & class B Vent, on roof of bldg.	Not recom'd. Cooling tower is visible above parapet & is seen at eye-level from Prospect St. Do not recom'd carrying vent up outside west wall of bldg. (Note: Exist. vent was not acted on by the CFA.) If cooling tower cannot be kept below parapet, recom. submission of photo of actual cooling tower for study to determine whether appropriate screening is necessary. Vent should be carried up inside wall, 3/27/59
2346	3013 Dumbarton Ave. Robert Sivard	Build addn. & powder rm. & alterations; alternate plans presented	Recom. scheme 1, for parts visible from a public highway, 3/30/59
2347	2815 N St., Priscilla Mason	New 3-story brick dwelling & fence wall	Recom'd. for parts visible from a public highway, 3/27/59
2348	3258 "O" St. Hiram Mallinson	Remove screen sections on 2nd fl. rear porch & install double hung windows & apply asbestos siding	Ret'd. Alley from which this bldg. is visible is indicated as a private, not public alley. (Note: Use of twin double-hung windows not recom'd; asbestos siding treatment around & below windows, not recom'd), 3/27/59
2349	3600 M St., D. C. Transit System	Install cooling tower on roof at Prospect St. end of bldg; install Class B vent thru roof	Recommended as revised, 4/2/59
2350	1619-30th St Langood Realty Co. (Apt. house)	Install Awnair Aluminum door canopy over front door, projecting 54", 26" wide, black & white, hinged type, no fixed iron frames or posts; installed above entr.	Not recom'd. Awnings of this type & material are not compatible with the intent of P. L. 808-81st Congress. Advise use of canvas awning as recom'd. in OG 2333, 4/8/59

Exhibit E

appr

REPORT OF ACTIONS TAKENON OLD GEORGETOWN ACT APPLICATIONS SINCE 3/18/59 MEETING

Exhibit B

11 May 1959

Dear Mr. President:

On March 6,1957, the Corporation Counsel for the District of Columbia rendered an Opinion to the District of Columbia Commissioners as to the extent of the applicability of the Old Georgetown Act (Public Law 808/81st Congress, H. R. 7670). Since that time, in accordance with the Opinion mentioned, the District Commissioners have referred few applications for permits to the Commission of Fine Arts and have permitted destruction of houses, as in the case of 3033 P Street, in order that new buildings might be erected on the site. In the case cited, the house was not destroyed because its condition was insanitary.

The position of the Corporation Counsel appears to be that the Act intends only that buildings in which historic events took place should be maintained and that the owners of other houses are at liberty to sell, destroy and rebuild as in their judgment seems best. Since the enactment of this legislation, the Commission has assumed that it was intended to preserve not only places of historic interest but also examples of the type of architecture used in the National Capital in its initial years, as stated in the Act. Its recommendations have been directed toward the preservation of the architectural values of the Georgetown, district, including such exterior features as are visible from a public highway, such as signs, lights, fences and walls. While the Commission did not initiate this legislation it has endeavored to discharge the responsibilities imposed upon it by this Act.

In order that the Commission may know what its duties are under the law, I am forwarding to you a copy of the Georgetown Act and also a copy of the Corporation Counsel's Opinion which is at present guiding the actions of the District Commissioners. I hope that you may send them to the Attorney General so that he may advise the Commission whether the Opinion of the Corporation Counsel correctly interprets Public Law 808.

The Commission of Fine Arts has no legal counsel on its staff. As a member of the District of Columbia Bar, I have served in this capacity when necessary; and, in my judgment, the Corporation Counsel's Opinion does not interpret the law in accordance with the intent of Congress as expressed in the Act.

I hope, therefore, in accordance with precedent, you will be willing to refer the matter to the Attorney General with a request that he advise whether the Corporation Counsel has correctly interpreted the Law and what are the duties of the Commission of Fine Arts under Public Law 808.

For the Commission of Fine Arts:

Faithfully yours,

David E. Finley
Chairman

The President
The White House

enclosures: Public Law 808/81st Congress
Corporation Counsel's Opinion
dated March 6,1957

Department of Justice

FOR IMMEDIATE RELEASE
JANUARY 18, 1960

The Department of Justice made public today the following opinion given to the President by Attorney General William P. Rogers:

January 15, 1960

The President

The White House

My dear Mr. President:

I have the honor to respond to your request for my opinion concerning the construction of the Act of September 22, 1950, 64 Stat. 903, creating the "Old Georgetown" district in the District of Columbia and regulating the height, exterior design, and construction of private and semipublic buildings therein. It appears that the Commissioners of the District of Columbia and the National Commission of Fine Arts are in disagreement as to the scope of the Act.

Section 2 of the Act provides that "[in] order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its early years", the District Commissioners, before issuing any permit "for the construction, alteration, reconstruction, or razing of any building" in the Old Georgetown district, shall refer the plans to the Commission of Fine Arts

Exhibit 7-1

(established by the Act of May 17, 1910, 36 Stat. 371, 40 U.S.C. § 104) for its report "as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway." The Commission of Fine Arts is required to report to the District Commissioners its recommendations, including such changes as it deems necessary to preserve the historic value of the district. The Commissioners are authorized to take such actions as they regard proper in the circumstances.[1/] The Act expressly provides, § 5, that it shall not be construed as superseding or affecting legislation relating to the alteration, repair, or demolition of insanitary or unsafe buildings.

1/ The text of § 2 reads as follows:

SEC. 2. In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years, the Commissioners of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in section 1 shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Commissioners of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Commissioners shall take such actions as in their judgment are right and proper in the circumstances: Provided, That, if the said Commission of Fine Arts fails to submit a report on such plans within forty-five days, its approval thereof shall be assumed and a permit may be issued.

There are two principal areas of disagreement between the Commission of Fine Arts and the District Commissioners. The Commission of Fine Arts asserts, first, that the Act applies to all buildings in the Old Georgetown district, whether old or new. The District Commissioners agree that the Act protects existing structures of demonstrable historic or architectural interest. They claim, however, that it does not reach new construction or the alteration of existing structures generally, but only to the extent that such construction or alteration might be said adversely to affect nearby protected structures. The second matter in dispute is whether the operation of the Act is confined to buildings proper or extends to such appurtenances as advertising signs, fences, and walls. The Fine Arts Commission claims the latter, the District Commissioners, the former.

The background for the legislation is as follows: Georgetown was founded as an organized community in 1751. By the time of the Revolution it had become a town of some commercial importance and had many fine homes. Its continuing development influenced the selection of the site of the National Capital in 1791. Georgetown scholars have said (Eberlein and Hubbard, Historic Houses of George-Town & Washington City (1958) 12):

> By the time the momentous decisions upon the site of Washington took place, George-Town was a full-fledged self-possessed community with all the machinery of civilised society working smoothly--a place quite fit to be the foster parent of an urban development on the other side of Rock Creek.

Georgetown's "golden age" covered the years 1775-1825. Concerning its architecture during that period, it has been stated that the houses "are true examples of the Federal tradition, influenced by Colonial antecedents, but built during the early days of the new Republic--examples of a school which flourished under the patronage of Thomas Jefferson who,

as Secretary of State under Washington and as President, had very considerable influence in fostering America's Federal style. * * *. The homes of the period possess a delicacy of scale which distinguishes them, and which was the result of a masterful adaptation of elements of Classic precedent * * *." Davis, Dorsey and Hall, Georgetown Houses of the Federal Period (1944), 17.

Georgetown fell into decline during the latter part of the last century--" the warehouses crumbled along its once busy waterfront * * * its face became considerably altered by new rows of ugly Victorian dwellings, many of which remain. * * *. Georgetown's golden age became a memory, and the principal glory of the community became the lovely relics of its past." Davis, Dorsey and Hall, op. cit., 16. Recent years have witnessed a rebirth for Georgetown which had never completely lost its individual atmosphere. There has been a concerted effort both official and private to re-establish the former exterior architectural appeal of Georgetown. Included in this effort is the legislation here involved, which was prompted, as noted by the House committee (H.R. Rept. No. 2468, 81st Cong., 2d Sess.), by the desire of Georgetown residents to protect the district "by an authority which will direct the type of structure suitable to the area", its original character predominating architecturally in the residences and streets.

It should also be noted that the Old Georgetown Act is not unique legislation. Similar authority has been provided for historic districts in such diverse places as Alexandria, Virginia, New Orleans, Louisiana, Charleston, South Carolina, Annapolis, Maryland, Nantucket, Boston, Salem and Lexington, Massachusetts, Natchez, Mississippi, Albuquerque, New Mexico,

and the Virgin Islands. See Morrison, Historic Preservation Law (1957); Planning and Community Appearance (1958), ch. IV, V (Report of the Joint Committee on Design Control of the New York Chapter, American Institute of Architects and the New York Regional Chapter, American Institute of Planners). Mr. Morrison states (op. cit., 7-8) that the legislation in the field employs standard terminology, indicating that the later ones have drawn on the earlier for guidance. It is therefore apparent that as a general proposition the judicial precedents for one are apposite for others.

I

I find no substantial support for the construction of the Old Georgetown Act urged by the District Commissioners which would restrict it in its operation to the protection of existing buildings possessing a demonstrable historical or architectural significance. The position taken by the Commissioners is the result of an opinion rendered by the District of Columbia Corporation Counsel, dated March 6, 1957. In that opinion the Corporation Counsel argues that, the language of the Act being "vague and indefinite", it is permissible to examine the legislative history and, since appropriate guidance is not to be found in the history, the statute must be interpreted by reference to relevant rules of statutory construction. The first rule cited is that a statute in derogation of the common law must be construed strictly rather than liberally. According to the Corporation Counsel, the Old Georgetown Act is a statute of that nature because it infringes upon an owner's right to use his property as he sees fit. The second rule is that a statute is to be construed to avoid constitutional doubts. While the Corporation Counsel concedes that an

owner's use of his property is subject to an appropriate exercise of the police power, he argues that if this legislation is construed as an attempt to control the construction of buildings in the Old Georgetown district, without regard to whether the immediate surrounding area contains a building of historical or architectural value, an owner could claim with reason that he had been arbitrarily deprived of the free use of his property. As the Corporation Counsel puts it, "the proposed use of property by an owner can be limited or directed along different lines under the authority of the Old Georgetown Act only if such proposed use, unless limited or changed, can reasonably be expected materially to harm, injure, destroy, or affect detrimentally a place or area of historic interest, or an example of a type of architecture or an exterior architectural feature used in the National Capital in its initial years."

I see nothing vague or ambiguous in the language used by Congress to denote the scope of the Act in this regard. The Act plainly states that the plans which must be submitted to the Fine Arts Commission are those for the "construction, alteration, reconstruction, or razing of any building" in the Old Georgetown district. It is difficult to believe that Congress would have used this comprehensive language had it been its intention to confine the statute to existing structures of demonstrable historic or architectural value. Such a reading is also inconsistent with the use of the word "construction", which obviously is not germane with reference to a building already standing. One cannot "construct" an existing building. The very title of the act suggests the broadest coverage; it is entitled "An Act To regulate the height, exterior design, and construction of

private and semi-public buildings in the Georgetown area of the National Capital."

Resort to the legislative history does not lead to a different interpretation. The Corporation Counsel states that it sheds little light on the problem. There is, however, one affirmative item of substantial significance regarding the intention of Congress. The bill as introduced (H.R. 7670, 81st Congress) omitted the word "construction" in the phrase of the statute reading "construction, alteration, reconstruction, or razing of any building within said Georgetown district * * *." That word was added by committee amendment (see H. Rept. No. 2468, supra), and it was included in the statute without debate. See 96 Cong. Rec. 10086-10087. In the face of this deliberate enlargement of the scope of the bill it is difficult to believe that Congress meant it to be read in the restricted manner suggested by the Corporation Counsel.

Moreover, considerable guidance as to the appropriate construction is furnished by the courts. As noted above, the Old Georgetown Act has its counterparts in other areas. Several have been the subject of judicial interpretation. Their constitutional validity has not been doubted. Nor have the courts indicated that such legislation must be narrowly construed on the assumption that it is in derogation of the "common right" (see City of New Orleans v. Pergament, 198 La. 852, 5 So. 2d 129 (1941); City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953)) or "common law" (see Opinion of the Justices, 333 Mass. 773, 128 N.E. 2d 553 (1955); Opinion of the Justices, 333 Mass. 783, 128 N.E. 2d 563 (1955)). In my judgment, the Corporation Counsel is not justified in stating that these decisions

are not inconsistent with his opinion.

The Pergament and Levy cases involved the Vieux Carre district of New Orleans, the old Spanish and French quarters of the city. In 1936 the Louisiana constitution was amended to authorize the city to establish a Vieux Carre Commission to preserve buildings in the Vieux Carre district possessing architectural and historical value. For that purpose the plans for any new building in the district or those for alteration of an existing building therein had to be submitted to the commission for a report as to the appearance, color, texture of materials and architectural design of the exterior. The city thereafter established the commission and in the ordinance therefor provided that it should be unlawful for the proprietor of any building in the Vieux Carre to maintain an advertising sign without first obtaining a permit from the commission. In the Pergament case the defendant who owned a gasoline filling station in the Vieux Carre was prosecuted for displaying an advertising sign thereon without having obtained the permission of the commission. He demurred on a number of grounds, including that the ordinance as to his place of business was arbitrary, unreasonable and oppressive, deprived him of his property without due process of law, denied him the equal protection of the laws, and that the constitutional amendment did not authorize an ordinance with reference to buildings such as his, which was a modern structure, having no architectural or historical worth. The Supreme Court of Louisiana, in overruling the demurrer, stated in part (198 La., at p. 858):

> * * * there is nothing arbitrary or discriminating in forbidding the proprietor of a modern building, as well as the proprietor of one of the ancient landmarks, in the Vieux Carre to display an unusually large sign upon his premises. The purpose of the ordinance is not only to preserve the old buildings themselves but to preserve the antiquity of the whole French and Spanish quarter, the tout ensemble, so to speak, by defending this relic against iconoclasm or vandalism. Preventing or prohibiting eyesores in such a locality is within the police power and within the scope of this municipal ordinance. The preservation of the Vieux Carre as it was originally is a benefit to the inhabitants of New Orleans generally, not only for the sentimental value of this show place but for its commercial value as well, because it attracts tourists and conventions to the city, and is in fact a justification for the slogan, America's most interesting city.

In the Levy case, decided in 1953, the Supreme Court of Louisiana, reaffirming its earlier holding in Pergament, sustained the defendant's conviction for displaying a building sign in violation of the Vieux Carre ordinance, even though the building itself had no historical or architectural value. The court also held that while aesthetic considerations alone might not be a sufficient constitutional basis for restricting the use of real property, "this legislation is in the interest of and beneficial to the inhabitants of New Orleans generally, the preserving of the Vieux Carre section being not only for its sentimental value but also for its commercial value, and hence it constitutes a valid exercise of the police power." (223 La., at p. 28.)

In 1955 the Justices of the Supreme Judicial Court of Massachusetts expressed the opinion, in response to a legislative inquiry in accordance with Massachusetts practice, that there existed no constitutional infirmities in proposed legislation (thereafter enacted) controlling the erection, reconstruction, alteration, or razing of any building in the old and historic districts of Nantucket and similar legislation with respect to the historic

Beacon Hill district in Boston. Opinions of the Justices, supra. The Justices held that the legislation did not constitute a taking of property in a technical sense since title remained in the owner, and that the proposed restrictions on the use of private property constituted a valid exercise of the police power. It is significant that in this connection the opinion cites the Old Georgetown Act, apparently assuming both its application to new construction and its constitutionality (see 333 Mass., at p. 781). The Justices expressly held that there was no constitutional problem in the application of the proposed legislation to new construction, stating that "/i/t is not difficult to imagine how the erection of a few wholly incongruous structures might destory one of the principal assets of the town /Nantucket/." (333 Mass., at p. 780). Similarly, it was stated as to the Beacon Hill legislation (333 Mass., at p. 787):

> The announced purpose of the act is to preserve this historic section for the educational, cultural, and economic advantage of the public. If the General Court believes that this object would be attained by the restrictions which the act would place upon the introduction into the district of inappropriate forms of construction that would destroy its unique value and associations, a court can hardly take the view that such legislative determination is so arbitrary or unreasonable that it cannot be comprehended within the public welfare.

The Supreme Court of Wisconsin has gone even further, sustaining as a valid exercise of the police power an ordinance regulating the architectural features of new buildings, without reference to any historical factors and solely on the basis of their relation to the architecture of existing structures in the area. State ex rel. Saveland P.H. Corp. v. Wieland, 269 Wis. 262, 69 N.W. 2d 217 (1955). While the specific basis of the ordinance was the desire to protect property values in the

neighborhood, the court indicated that in the light of the decision in Berman v. Parker, 348 U.S. 26 (1954)[2] aesthetic considerations alone might suffice.

The Corporation Counsel points to a statement in the Opinion of the Justices in the Nantucket case as "support/ing/ very strongly the position that he has consistently taken with respect to depriving property owners in the area affected by the Old Georgetown Act from making certain uses of their property." After concluding that the proposed legislation would be constitutional, the Justices added as a cautionary observation that "it would seem that refusal to permit the removal of some old and decrepit structure impossible to repair within reasonable cost might in some instances be an unconstitutional application of the act * * *." (333 Mass., at p. 781.) As the statement shows, the Justices were addressing themselves, not to the question here involved of constitutional authority to act in this area, but with the different question of administration of a constitutional law in an unconstitutional manner. I do not regard this cautionary language directed to a hypothetical situation as furnishing any support for the restrictive interpretation of the Old Georgetown Act urged by the Corporation Counsel in order to avoid constitutional doubts. As noted above, the Justices had no difficulty with the constitutionality of the legislation as it affected new construction. Moreover, the Act gives the District Commissioners ample power to deal in a reasonable manner with applications

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2/ In Berman the court, in sustaining the District of Columbia Redevelopment Act of 1945, stated (p. 33) that "/t/he concept of the public welfare is broad and inclusive. * * *. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

for the demolition of decrepit buildings. They are vested with the ultimate authority to "take such actions as in their judgment are right and proper in the circumstances." This provision plainly empowers the Commissioners to permit a decrepit building to be torn down if it should appear that its repair would be unduly expensive.

My study of the Act and its history, and of the cases dealing with analogous statutes, leads me to conclude that it extends to the exterior construction or alteration of all buildings in the Old Georgetown district, and that as so construed, it raises no serious constitutional issue.

II

The remaining question is whether the statute, which in terms mentions only "buildings," should be read as including such appurtenances as signs, outside lights, fences, and walls. The Corporation Counsel asserts the negative. He argues that by dictionary definition the word "building" does not have such a meaning, and that to give it a broader scope in the instant statute is unwarranted for the following reasons: (1) Being a statute in derogation of the common law it must be strictly interpreted; (2) Congress did not intend the statute to affect the application to Georgetown of the earlier Sign Act applying to the District of Columbia generally (Act of March 3, 1931, 46 Stat. 1486, D.C. Code (1951) §§ 1-231-1-233).

I must again disagree with the position of the Corporation Counsel. The dictionary definition is not controlling. It has been frequently held that the word "building" as used in a statute, deed, or contract may be construed to include such appurtenant structures as signs, fences, and

walls, depending on the connection and purpose with which the word is employed. See, e.g., Swasey v. County of Shasta, 141 Cal. 392, 74 P. 1031 (1903); Kruetgen v. General Outdoor Advertising Co., 288 Ill. App. 619, 6 N.E. 2d 649 (1937); Wright v. Evans, 2 Abb. Pr. N.S. (N.Y.) 308 (1867); Mecca Realty Co. v. Kellogg Toasted Corn F. Co., 166 App. Div. 74, 151 N.Y.S. 750 (1915), and compare, 39 Op. A.G. 73, 77 (1937). It is unreasonable to believe that Congress meant to subject to the scrutiny of the Fine Arts Commission the exterior architectural features of buildings in the Old Georgetown district subject to public view from a public highway and at the same time to give the Commission no control over such appurtenances as signs, outside lights, fences, and walls which are equally exposed to public view; these if uncontrolled might readily disturb the general architectural appearance of the area. It is significant that the similar provisions in other jurisdictions either expressly refer to the display of signs or have been construed to authorize the promulgation of regulatory ordinances. Moreover, for the reasons adverted to in the first part of this opinion, I do not feel that the statute has to be narrowly construed under the claim that it is in derogation of law and in order to avoid constitutional doubts.

Nor am I impressed by the Corporation Counsel's reliance on the existing Sign Act. That statute obviously must yield to the subsequent Georgetown legislation to the extent that its continued application to the Georgetown district impedes the effectiveness of the later statute. It will be noted that § 5 of the Act explicitly provides that it shall not supersede or affect any earlier enactment relating to unsanitary or unsafe dwellings or other structures. This is a plain indication that but for the savings clause such earlier legislation would have been affected by

the Act. It is a fair implication that except as provided by § 5 Congress intended the Old Georgetown Act to control.

The force of the Corporation Counsel's opinion in this respect is weakened by subsequent action taken by an agency of the District Commissioners, without objection by the Corporation Counsel, concerning the scope of the word "building" appearing in the Shipstead-Luce Act of May 16, 1930, 46 Stat. (Part I) 366, as amended, 53 Stat. 1144. In 1959 there was presented to the District of Columbia Board of Appeals and Review (established by Organization Order No. 112 of the Board of Commissioners of the District, dated August 11, 1955 (D.C. Code (1951) (Supp. VII), p. 89)), the question whether the jurisdiction of the Fine Arts Commission under the Shipstead-Luce Act extended to outdoor display signs. The Shipstead-Luce Act regulates the architecture of private and semipublic buildings adjacent to public buildings and grounds of major importance in the National Capital. Plans for the erection or alteration of "any building" in the area covered are required to be submitted to the Fine Arts Commission for recommendation insofar as they relate to height and appearance, color, and texture of the materials of exterior construction. Like the Old Georgetown Act signs are not specifically mentioned. Nevertheless, the Board of Appeals and Review on May 21, 1959, held that the Shipstead-Luce Act was applicable to signs, stating that the Corporation Counsel's opinion with respect to the Old Georgetown Act was distinguishable. (Docket No. M 858, Decision No. 917). Upon reference of this decision to the Corporation Counsel he did not undertake to review it as permitted by the District Commissioners' Order No. 58-2007, dated December 4, 1958, in cases in which he is not in accord

with the interpretation of the law made by the Board of Appeals and Review. I am not persuaded by the distinctions made by the Board. In my judgment, they do not justify differing interpretations of the word "building" appearing in both statutes.

Respectfully,

William P. Rogers

Attorney General

59R-1

8 April 1959

Dear Mr. Stans:

I am writing you in reply to Mr. Phillip S. Hughes' Legislative Referral Memorandum of 27 March 1959, which requested the Commission of Fine Arts' views on a Draft Bill "To authorize the purchase of land for donation to the Pan American Health Organization as a headquarters site." (Submitted by the Department of State).

The Commission of Fine Arts would be glad to see the purpose of this draft legislation accomplished. The need for more office space for the various working sections of the Organization of American States has been growing acute for several years. There is no more space to erect buildings in the vicinity of the Pan American Union Headquarters and Annex buildings between 17th and 19th Streets at Constitution Avenue, northwest, without encroaching on landscaped areas which are not in themselves adequate for the purpose. The acquisition of Square 59 for this purpose will thus satisfy an urgent need without sacrificing the fine trees and lawns about the Pan American Union.

Acquisition of Square 59 will further benefit the appearance of the Foggy Bottom area by placing all the land bordering the south side of Virginia Avenue, between Constitution Avenue and 23rd Street, northwest, in governmental ownership. The Government will then be enabled to control the design of any building erected, and to safeguard the governmental character of the area being created there by the State Department Annex, and other structures.

We are glad to recommend favorable action by the Bureau of the Budget on submission of the bill to Congress.

For the Commission of Fine Arts:

Sincerely yours,

David E. Finley
Chairman

Honorable Maurice Stans
Director
Bureau of the Budget
Washington 25, D. C.

Exhibit G

59R-1

AN ACT

To authorize the acquisition of land for donation to the Pan American Health Organization as a headquarters site.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the Administrator of General Services to acquire by purchase, condemnation or otherwise, including any expenses of such acquisition, the land in the northwest section of the District of Columbia, known as Square 99, bounded on the north and south by Virginia Avenue and E Street, and on the east and west by 22nd and 23rd Streets, together with any buildings and improvements thereon.

Sec. 2. The Administrator of General Services is hereby authorized to convey without consideration the property acquired under section 1 of this Act to the Pan American Health Organization, formerly known as the Pan American Sanitary Bureau and the Pan American Sanitary Organization, for use as a headquarters site.

Exhibit G-1